



19 March 2013

Sent via E-mail

Planning and Environment Committee
City of London
300 Dufferin Avenue
P.O. Box 5035
London, ON N6A 4L9

Attention: Heather Lysynski and Jerri Bunn
hlysynsk@london.ca
jbunn@london.ca

Dear Members of the Planning and Environment Committee:

**Re: Applications for Official Plan and Zoning By-law Amendment (the “Applications”)
Sifton Properties Limited (“Sifton”)
Portion of 1451 Wharncliffe Road South and 1311 & 1363 Wharncliffe Road South
Southwest London (the “Sifton Lands”)
City of London (the “City”)**

We are the solicitors for Greenhills SC Ltd., the owner of property located at the south-east corner of Wonderland Road and Exeter Road, within the London Southwest Planning Area.

We understand that the above noted Applications are seeking, in part, to change the land use designation of the Sifton Lands from *Auto-Oriented Commercial Corridor* and *Multi-Family High Density Residential* to *Community Commercial Node*, in order to permit a wide range of commercial retail uses, a limited range of automotive services, service-oriented office uses, community facilities such as libraries or day-care centres, professional and medical/dental offices and commercial/private schools.

We are in receipt of the Staff Report on the Applications and we offer the following submissions regarding the Applications

Submissions

Background

As you are aware, the City has spent over 3 years on the development of a comprehensive planning and development vision for Southwest London. After much significant public consultation and feedback, in which our client fully participated, the City, in November 2012, adopted OPA 541 which includes a

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Secondary Plan (the “Southwest Area Secondary Plan” or the “Secondary Plan”) and related amendments to the Official Plan which together lay out the planning vision for Southwest London.

Sifton Applications Inconsistent with Planning Policies

OPA 541 (including the Secondary Plan) was adopted after a long and comprehensive public consultation process, and was also supported by numerous background studies and analysis. These Applications were known to City staff at the time of the consideration of OPA 541, however staff did not recommend a change in the designation of the Sifton Lands at that time and OPA 541 did not apply a new designation to the Sifton Lands. The Sifton Lands’ planned function remains Multi-Family High Density Residential and Auto-Oriented Commercial Corridor as they were prior to the adoption of OPA 541.

The following schedule from OPA 541 illustrates the location of the Sifton Lands and its close proximity to the Wonderland Road Community Enterprise Corridor. The schedule also illustrates that the residential neighbourhood to the north and east of the Sifton Lands will gain convenient access by the extension of Bradley Avenue to Wonderland Road to the Corridor and to the full range of retail and service uses presently permitted in the Official Plan (and to be permitted by OPA 541).

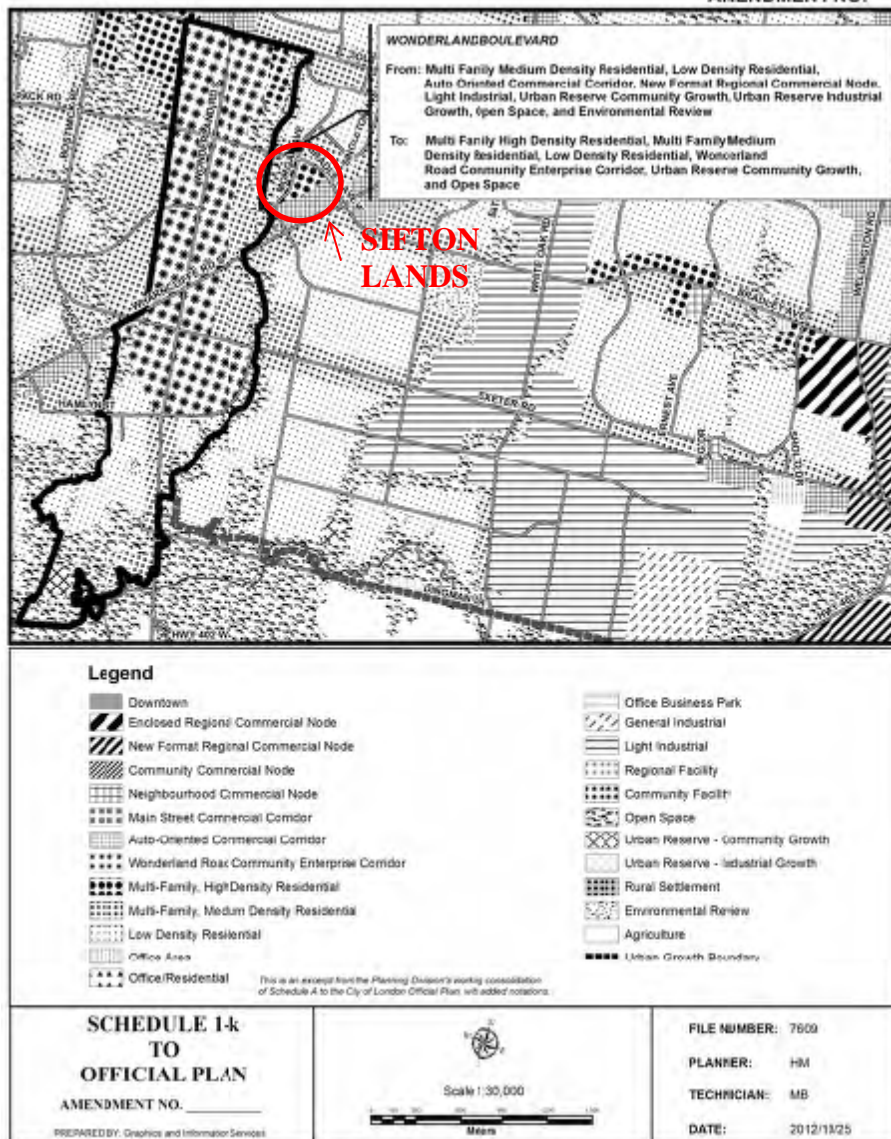
It appears that Sifton has promoted the idea that its Applications should be processed without regard to Council’s recent decision in approving OPA 541 (including the Secondary Plan) on the basis that the Applications were made prior to the adoption of OPA 541 (including the Secondary Plan). Staff appear to have accepted this rationale:

“The Sifton application was accepted by the City on August 3, 2012 and the generally followed principles that are followed under Ontario Planning legislation require the proposed amendments to be assessed against the same policy framework that was in place at the time of the application. Therefore, the application will be evaluated under the current Official Plan policies and will not take into consideration the designations or policies of OPA 541” (emphasis added) (Staff report, p.7)

The approach that has been taken by staff on this question is not consistent with the approach that has been enunciated by the Ontario Municipal Board. The Board has indicated in a number of decisions that newly adopted planning policies can be given consideration when considering applications that were made before the planning policies were adopted. In some instances, the Board has been prepared to give “significant weight” to the new policy framework because it represents the most current iteration of planning policy for the municipality.

As a result staff have processed the Applications without taking into consideration the designations or policies of OPA 541 (including the Secondary Plan).

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Furthermore Sifton's position (accepted by staff) is highly prejudicial to landowners relying on the Wonderland Road Community Enterprise Corridor, in particular those such as our client who intend to develop its lands in accordance with the Wonderland Road Community Enterprise Corridor designation which permits all uses found in the "New Format Retail Commercial Node" designation. Sifton appears to want to obtain an approval which would permit retail and service uses that are the same as those

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permitted in the Wonderland Road Community Enterprise Corridor while at the same time appealing retail and service uses permitted in the Wonderland Road Community Enterprise Corridor.

Under these circumstances the Applications should be referred back to staff with a direction that they be considered in the context of the designations and policies of OPA 541 (including the Secondary Plan).

Sifton has appealed Secondary Plan

As we have noted above Sifton has appealed OPA 541, which includes the Secondary Plan, to the Ontario Municipal Board. In a letter dated August 31, 2012 attached to the Sifton appeal, counsel for Sifton stated:

It is unclear how the proposed enterprise designation will fit within the commercial hierarchy. We are aware of a number of proposals, in the Wonderland Road corridor, for a significant amount of retail commercial space which, if approved, would risk significant adverse impacts on other lands designated for commercial purposes. We have attached a letter from our client's market consultant with respect to the market implications of this approach.

Insofar as Sifton takes the position that market demand is a relevant consideration in regard to the approval of further retail space in the "Wonderland Road corridor", and insofar as it raised the prospect of "significant adverse impacts on other lands designated for commercial purposes", the logical response to this position is to *not* approve the additional retail uses (such as department stores) and additional retail space being sought by Sifton until the potential impact of such approvals on the achievement of the planning policies applicable to the Wonderland Road Community Enterprise Corridor have been considered.

It is surprising that the Sifton appeal of OPA 541 was not considered in the Staff Report.

Sifton Market Study Out of Date

We note that the Market Demand and Impact Analysis submitted on behalf of the Applications is dated March 2012. Although the staff report on the Applications notes that the Market Demand and Impact Analysis takes into consideration some of the elements of the Southwest Area Plan (e.g. designation of residential lands) the report states that the Wonderland Road Community Enterprise Corridor was not considered.

The City's own Market Demand and Impact Analysis background study for the Southwest London Area Plan is dated May 15, 2012.

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Sifton’s market study therefore does not take into account the most recent information and data for Southwest London, in particular the adoption of the Secondary Plan and related official plan amendments, and as such should not be relied upon.

Nature of the Sifton Proposal

Notwithstanding that the Market Study is out of date, it provides a description of the true nature of the Sifton Proposal. The following table of potential development concepts for the Sifton Lands indicates that Sifton anticipates a viable development without reliance on the department store use.

Table 2.1: Preliminary Concept Plans and Various Development Components

	Concept 1	Concept 2
Department Store	130,000	na
Home Improvement Store	120,000	130,000
Supermarket/Grocery	na	50,000
Other Retail	35,000	70,000
Restaurant, Service, Office, Other	55,000	60,000
Total (sq.ft.)	340,000	310,000

**** Includes upper floors***

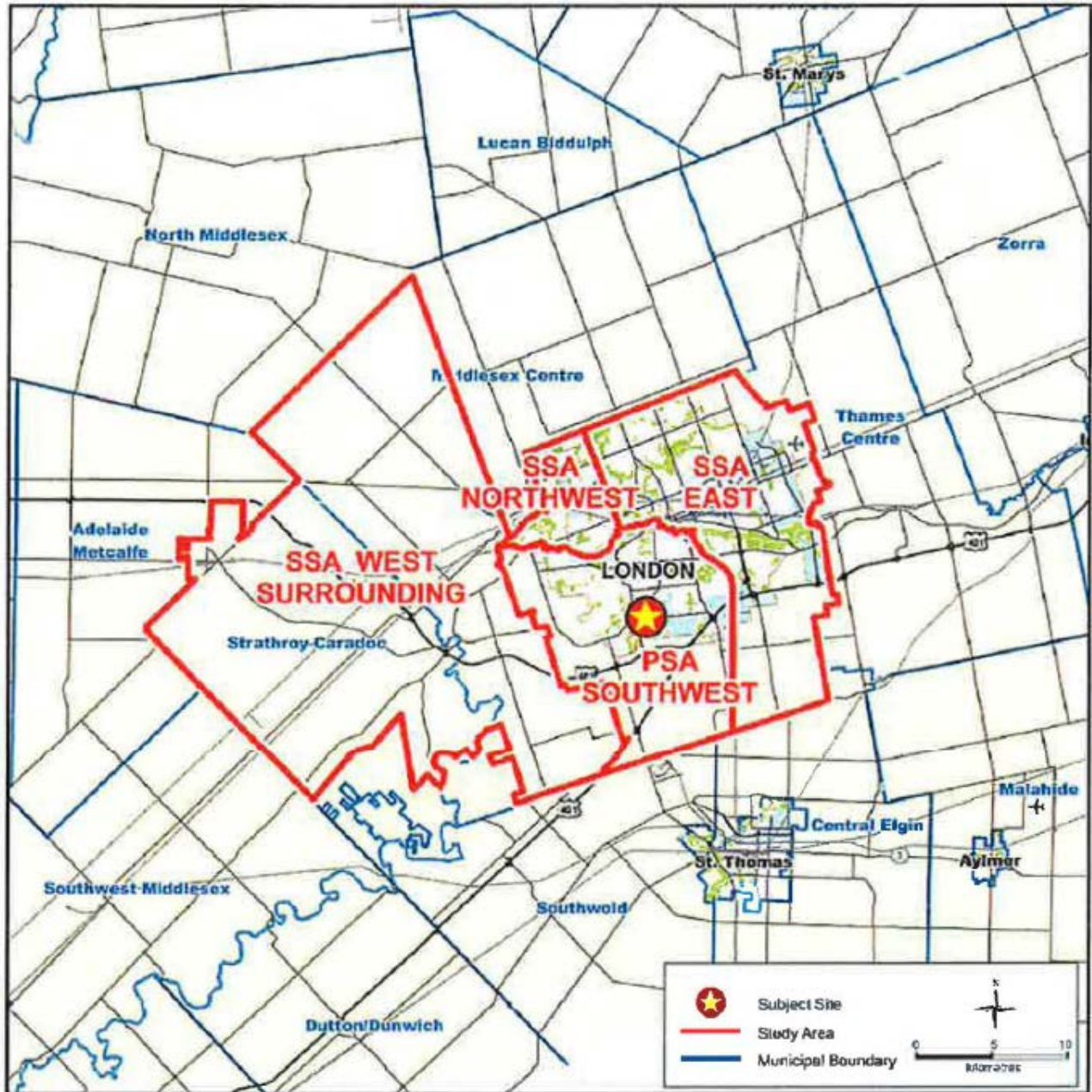
Furthermore, as can be seen from the map below, the Market Demand and Impact Study’s study area is comprised of practically all of built-up London and comprises a 2012 base population of about 419,500 which is projected to increase to 437,200 in 2018.

Although the staff report notes that the Community Commercial Node is “*intended to serve the shopping needs of surrounding neighbourhoods that are within convenient walking or driving distance*” it is clear from the study area used in the Market Demand and Impact Study that this proposed development will serve a larger area than that intended by the Community Commercial Node designation and this large trade area is largely due to the presence of a department store use.

The Market Demand and Impact Study does not indicate that there is a market for more than one additional department store in its study area which means that the permission for the department store on the Sifton lands may preclude the achievement of the department store on lands designated Wonderland Road Community Enterprise Corridor.

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Figure 4.1: Study Area





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As stated in the Southwest London Secondary Plan, the Wonderland Road Community Enterprise Corridor is intended to provide for a wide range of large scale commercial uses. The uses permitted in the Wonderland Road Community Enterprise Corridor are those that are permitted in the New Format Regional Node designation and include department stores.

There is no material difference in the range of retail and service commercial uses permitted in the Community Commercial Node designation and those permitted in the New Format Retail Commercial Node (see table attached as Appendix A). Therefore, an approval of the Applications will permit a duplication of the retail and service commercial uses permitted in the Wonderland Road Community Enterprise Corridor.

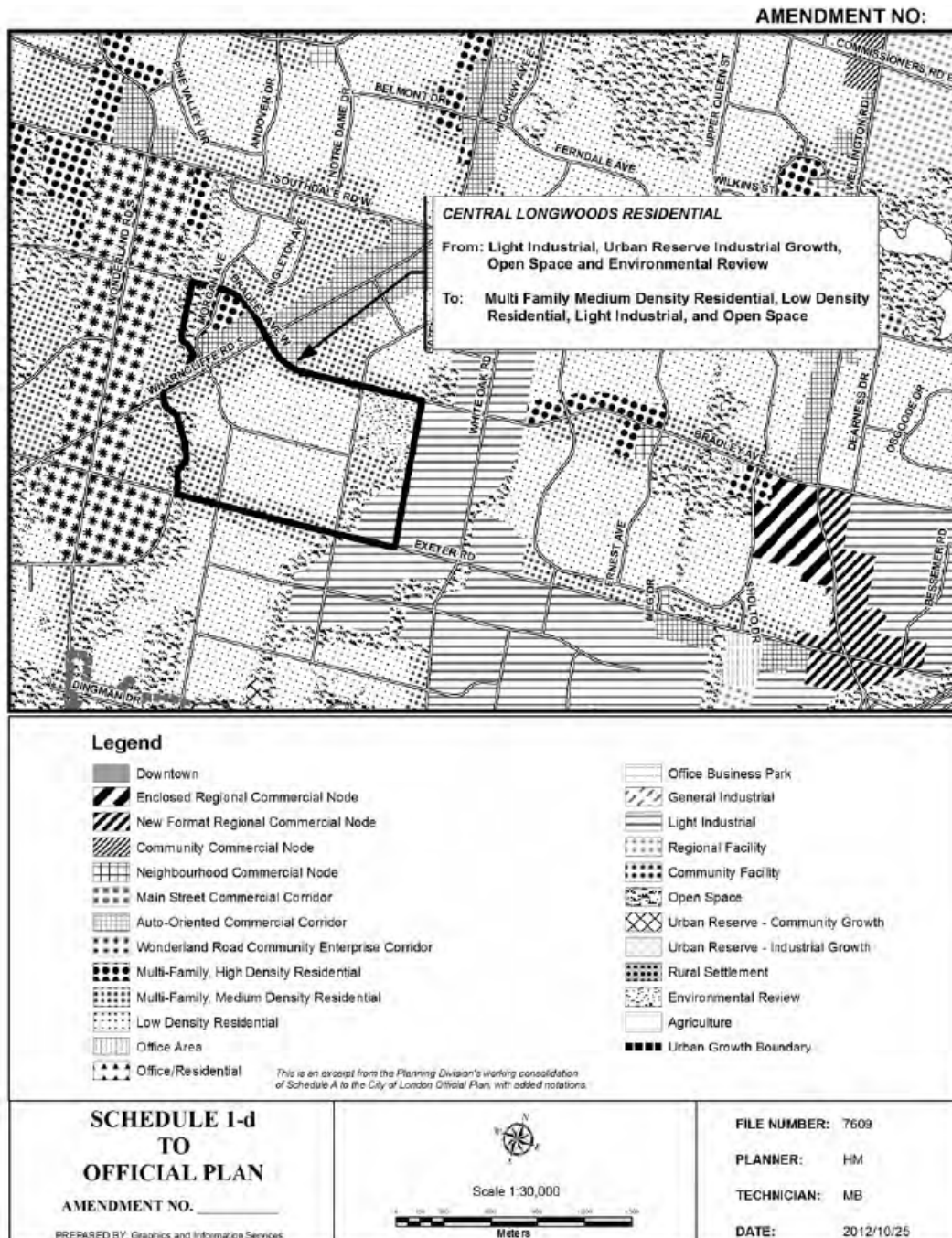
Clearly Sifton believes it has a viable project in Development Concept # 2 composed of a home improvement store, grocery store and ancillary retail and service uses.

Under these circumstances, if Council is not prepared to refer the Applications back to staff for proper consideration in the context of OPA 541 (including the Secondary Plan), it may be possible to reconcile Council's aspirations for the Wonderland Road Community Enterprise Corridor with Sifton's aspirations to have greater retail entitlements, by not permitting a department store on the Sifton Lands.

Proposed Amendment Schedule Inconsistent with Staff Recommendation

As a matter of clarification, we note that Staff Recommendation b) recommends that Council replace Schedule 1-d of Official Plan Amendment 541 with the land use schedule set out in Appendix A. However, the draft Official Plan Amendment schedule attached to the Staff Report as Appendix "A" is not Schedule 1-d of OPA 541 but rather an excerpt of Schedule A of the City of London Official Plan. The following schedule is Schedule 1-d that staff recommend be replaced.

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PROJECT LOCATION: E:\Planning\Projects\p_arastudies\SouthwestAreaStudy\RevisedAreaStudy_Sep_2012\CPAs\projects\AMENDMENT_A_CentralLongwoodsResidential_b&w.mxd

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Request of Council

An approval of the Applications would be inconsistent with the recent approval of it, including the Secondary Plan, and thus would not be in accordance with good planning principles, as contained in OPA 541 and other planning policies.

On behalf of our clients, we respectfully request, in view of the foregoing submissions, that Committee recommend to Council that it refuse the recommendations in the Staff Report and not approve the Applications.

If Council is not prepared to make a final decision to refuse the Applications at this time, then, in view of staff's failure to consider the Applications in the context of OPA 541 (including the Secondary Plan), we request that the Applications be referred back to staff with a direction that they be considered in the context of OPA 541 (including the Secondary Plan).

Should Council decide to consider approving the Applications, we request that a department store not be permitted as it would be prejudicial to the achievement to the planned retail commercial function of the Wonderland Road Community Enterprise Corridor.

We also request notification of any further meetings regarding the Applications and of the decision of Committee and Council on the Applications.

Yours very truly,

Wood Bull LLP



Dennis H. Wood

c. Client
Alanna Riley, City of London Planning Department (ariley@london.ca)

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Appendix “A”

Comparison of Permitted Retail Commercial Uses in Wonderland Road Community Enterprise Corridor, New Format Regional Commercial Node and Community Commercial Node Designations, London Official Plan as amended by OPA 541

Wonderland Road Community Enterprise Corridor	New Format Regional Commercial Node	Community Commercial Node	Auto-Oriented Commercial Corridor
Permitted commercial uses will include those uses outlined in the “New Format Retail Commercial Node” designation in the Official Plan.	Permitted uses including:	Permitted uses include:	Uses considered to be appropriate include:
	all types of large and small-scale retail outlets;	all types of retail outlets	
	including supermarkets and food stores;	supermarkets, food stores and pharmacies;	
	department stores;	including department stores,	
	retail warehouses,		
			warehouse and wholesale outlets;
	building supply, and home improvement and furnishings stores;	home improvement and furnishings stores,	building supply outlets and hardware stores; furniture and home furnishings stores;
	convenience commercial uses;	convenience commercial uses;	
	personal services;	personal services;	
	restaurants;	restaurants;	restaurants;

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Wonderland Road Community Enterprise Corridor	New Format Regional Commercial Node	Community Commercial Node	Auto-Oriented Commercial Corridor
	commercial recreation establishments;	commercial recreation establishments;	commercial recreation establishments;
	financial institutions and services;	financial institutions and services;	
	a limited range of automotive services;	a limited range of automotive services;	automotive uses and services;
	service-oriented office uses;	service-oriented office uses such as real estate, insurance and travel agencies;	
	community facilities, such as libraries;	community facilities, such as libraries or day care centres;	
	and professional and medical/dental offices.	professional and medical/dental offices;	
		and commercial and private schools	
			hotels; motels;
			sale of seasonal produce;
			nursery and garden stores;
			animal hospitals or boarding kennels;
			and other types of commercial uses that offer a service to the traveling public.
			Light industrial uses which have ancillary

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Wonderland Road Community Enterprise Corridor	New Format Regional Commercial Node	Community Commercial Node	Auto-Oriented Commercial Corridor
			<p>retail, wholesale or service functions; construction and trade outlets; repair, service and rental establishments; service trades; assembly halls and private clubs or similar types of uses that require large, open or enclosed display or storage areas; and service commercial uses which may create potential nuisance impacts on adjacent land uses may be permitted at certain locations subject to Provincial regulations. (Clause i) amended by OPA No. 95 - approved by MMAH 98/06/25)</p>
			<p>Secondary uses which serve employees of adjacent employment areas including eat-in restaurants; financial institutions; personal services; convenience commercial uses; a limited amount and range of retail uses;</p>

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Wonderland Road Community Enterprise Corridor	New Format Regional Commercial Node	Community Commercial Node	Auto-Oriented Commercial Corridor
			<p>day care centres; medical and dental offices and clinics; and offices associated with wholesale warehouse or construction and trade outlets, and similar support offices may also be permitted in appropriate locations.</p> <p>(Clause ii) amended by OPA No. 95 - approved by MMAH 98/06/25)</p>